# **GRIZZLY BEAR**

# Management Plan for Southwestern Montana 2013

# DRAFT PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT

Prepared by:



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#### INTRODUCTION

### **Process for Plan Development**

Montana Fish, Wildlife & Parks (FWP) developed the original grizzly bear management plan and programmatic environmental impact statement (EIS) for grizzly bear management in southwest Montana in 2002. The management plan and EIS was effective for a ten year period (2002-2012). At that time, the process involved a series of meetings with affected agencies, governments, and interested persons. FWP initiated the scoping process with discussion of potential issues and alternatives with biologists, wardens, and representatives from Idaho and Wyoming during the summer of 2000. Following those preliminary efforts, FWP held a series of 13 public scoping meetings in southwestern Montana. A draft plan was released for public comment in April, 2002. Formal public hearings were conducted and public comment was also accepted in writing for 90 days. All comments were used to assist in preparing the final plan. Development of the plan was further guided by recommendations of a group of citizens referred to as the Governors' Roundtable. The Roundtable was able to reach unanimous agreement on 26 recommendations that guide grizzly management to this day. FWP's southwest Montana grizzly bear management EIS was finalized and published in 2002.

Since development of that EIS the *Final Conservation Strategy for the Grizzly Bear in the Greater Yellowstone Area (CS)* has been published (2007) and numerous policies and Montana Codes have been adopted, altered, or removed relative to grizzly management. Public involvement was inherent in development of these guiding documents and policies, and as such, public comment and input has been a part of grizzly bear management since the first EIS. FWP did not deem it necessary to conduct formal scoping for development of this revision of the 2002 EIS. Public scoping in essence is a continual part of grizzly bear management as managers must address new and ever changing environments, biological states, and social tolerance in routine decision making.

The purpose of the CS is to "describe and summarize the coordinated efforts to manage the grizzly bear population and its habitat to ensure continued conservation in the Greater Yellowstone Area (GYA); specify the population, habitat, and nuisance bear standards to maintain a recovered grizzly bear population for the foreseeable future; document the regulatory mechanisms and legal authorities, policies, management, and monitoring programs that exist to maintain the recovered grizzly bear population; and document the commitment of the participating agencies" (CS 2007). This EIS document works from the standards and commitments within the strategy providing state specific information or guidance where appropriate. Guidance within this state plan does not differ from the standards and guidance provided within the CS.

## Montana Fish, Wildlife and Parks Goals for the Grizzly Bear

FWP has statewide goals for most wildlife resources. This plan specifically deals with the goals for managing grizzly bear resources in southwestern Montana. These goals are:

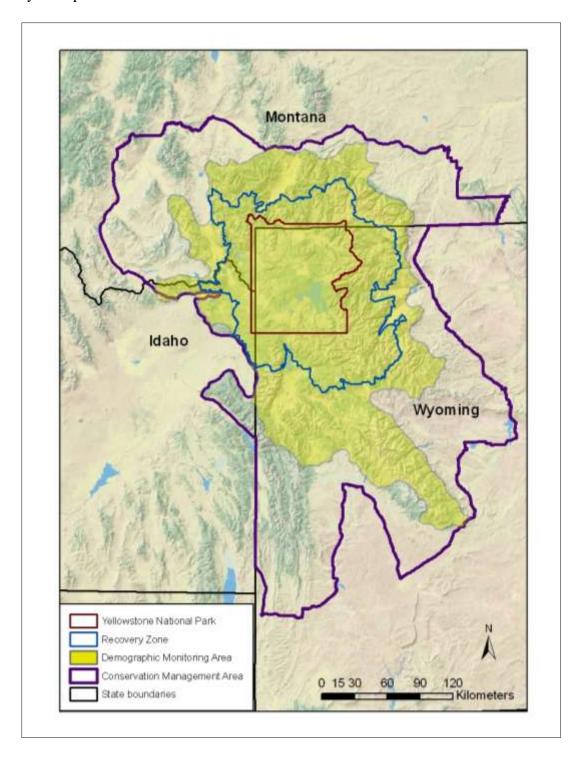
- 1. To protect, perpetuate, enhance, and regulate the wise use of wildlife resources for public benefit now and in the future.
- To manage for a recovered grizzly bear population in southwestern Montana and to allow for grizzly populations in areas that are biologically suitable and socially acceptable. This should allow FWP to achieve and maintain population levels that support managing the bear as a game animal along with other species of native wildlife. These efforts will provide some regulated hunting when and where appropriate while maintaining a recovered population under the required demographic criteria for grizzly bears in the GYE.
- 3. To provide the people of Montana and visitors with optimum outdoor recreational opportunities emphasizing the tangible and intangible values of wildlife, and the natural and cultural resources in a manner that:
  - a. Is consistent with the capabilities and requirements of the resources,
  - b. Recognizes present and future human needs and desires, and,
  - c. Ensures maintenance and enhancement of the quality of the environment.

These goals will be achieved by addressing the following: population management, future distribution, habitat and restrictions on human use of bear habitat, human safety, nuisance bear management, livestock conflicts, property damage, hunting of grizzlies, enforcement, education and outreach, and funding. The success of grizzly bear management in Montana will be contingent upon FWP's ability to address these issues in a way that builds and maintains tolerance for grizzlies.

The recommendations originally developed by the Governor's Roundtable are still pertinent today and support continued management of the proposed Primary Conservation Area (PCA), or recovery zone plus a 10 mile buffer area, as a secure "core" area for grizzly bears within the Yellowstone Ecosystem (Figure 1). The group also recommended that the states of Wyoming, Idaho and Montana develop management plans for the areas outside the PCA to:

- 1. Ensure the long-term viability of bears and avoid the need to relist the species under the Endangered Species Act (ESA),
- 2. Support expansion of grizzly bears beyond the PCA in areas that are biologically suitable and socially acceptable,
- 3. Manage the grizzly bear as a game animal including allowing regulated hunting when and where appropriate.

Figure 1. Greater Yellowstone Area depicting the original recovery zone for the Yellowstone grizzly bear, the current Conservation Management Area and the Demographic Monitoring Area where the grizzly population is intensely monitored. The Primary Conservation Area is the recovery zone plus a 10 mile buffer.



## **Purpose and Need**

The need for an update to the 2002 grizzly bear management plan was precipitated by changes in bear management in the Yellowstone Ecosystem during the 1980-90's, that resulted in increasing numbers and an expanding distribution of grizzly bears. In 2007, after the initial delisting of the Yellowstone grizzly bear, the United States Fish and Wildlife Service (USFWS) amended the recovery plan and CS to monitor grizzly bear population dynamics and mortalities in the area known as the Conservation Management Area (CMA, Figure 1). The CMA includes the areas delineated by the original recovery line and the USFWS suitable habitat line. In the last decade, land management, wildlife management, and recreation management within the CMA have led to established populations of bears outside the core area and throughout what is currently the CMA. It is FWP's objective to maintain existing renewable resource management and recreational use where possible and to develop a process where FWP, working with local publics, can respond to human-grizzly conflicts with appropriate management actions. Maintaining existing uses while allowing people to continue their lifestyles, economies, and feelings of well being builds support and increases tolerance for grizzly bear populations.

In the 2002 EIS, the Governors' Roundtable produced a recommendation to allow grizzly bears to inhabit areas that are "biologically suitable and socially acceptable." This recommendation has been followed since implementation of that EIS and FWP will continue this approach with the current responsible management program. The level of social acceptance of grizzlies in historical habitat changes based on how the issues are approached, the density of the bear population and how much faith people have in wildlife managers. To maximize the area of Montana that is "socially acceptable" grizzly bear range, the state planning and management effort has used an adaptive learning process to develop innovative, on-the-ground management. By demonstrating that grizzly bear conservation can be integrated with broad social goals, public faith in management can be enhanced and human tolerance of grizzly bears is developed and maintained. This approach already has demonstrated success in the GYE as well as in northwestern Montana, where bear populations have also increased and bears have reoccupied habitats from which they had been absent for decades.

In 2000, the Interagency Grizzly Bear Study Team (IGBST) began a process to reevaluate and update methods to determine the status of the GYA grizzly bear population, estimate population size, and determine the sustainable level of mortality in the GYA. In 2007, the USFWS supplemented the 1993 federal Grizzly Bear Recovery Plan with revised demographic criteria for the GYA population (72 FR 11376, March 13, 2007) and in 2013, the USFWS proposed to designate a new 'monitoring area' within which population and mortality data (i.e., demographic criteria) would be assessed. There is consensus among scientists and statisticians that the area within which mortality limits apply should be the same area used to estimate population size. This would mean mortalities of bears outside this monitoring area would not count against sustainable mortality limits, and, conversely, bears observed outside the monitoring area would not count toward estimates of population size. This proposed change, if finalized, would be appended to the Yellowstone chapter of the Grizzly Bear Recovery Plan (U.S. Fish and Wildlife Service 1993, p. 44) and the Final Conservation Strategy for the Grizzly Bear in the Greater Yellowstone Area.

The IGBST developed this new monitoring area using USFWS suitable habitat (see 72 FR 14866, March 29, 2007) and adding areas which could serve as mortality sinks (Interagency Grizzly Bear Study Team 2012). Mortalities outside of the monitoring area would continue to be recorded and reported but would not count against the sustainable mortality limits for that year. Grizzly bear occupancy would not be actively discouraged outside the monitoring area but management emphasis would be on conflict response. Grizzly bears would not be removed from the population just because they are outside the monitoring area but, as is the case within the monitoring area boundary, they may be removed from the population or relocated if there are conflicts. Grizzly bears may also be preemptively relocated to avoid conflicts, but their potential contribution to connectivity with other grizzly bear populations would be considered in any such preemptive moves. Preemptive moves would not be counted against a bear as a traditional conflict event would.

Significance of grizzly bear management to the people of Montana is highlighted by the fact that the state contains all or portions of four of the six distinct populations identified by the U.S. Fish and Wildlife Service's plan for grizzly recovery in the lower 48 states. The species is Montana's "State Animal," and there is specific policy directing management of the species. Grizzly bear populations have increased to USFWS recovery levels in the Yellowstone and the Northern Continental Divide area. The small population of grizzly bears in the Cabinet-Yaak area of Montana appears to be slowly increasing. Only one grizzly bear has been documented in the Bitterroot ecosystem since 2002.

This plan deals directly with that portion of Montana known as the GYA and adjacent lands in southwestern Montana and includes our management programs within the PCA. The GYA has been defined in many different ways by different people depending on their purposes. For the purpose of this plan, the GYA is defined very broadly for southwestern Montana to include lands that may be accessed by grizzly bears in the near future.

Before discussing the different issues and alternatives this plan addresses, it is important to keep the following perspectives in mind.

- Public support and tolerance for grizzlies is the key to their long-term recovery and reoccupancy of suitable habitats, and this support is contingent on local involvement and active local participation in plan development and implementation.
- All of the biological and social issues are interrelated, and no one part of the plan can function effectively without the others.
- This plan does not presuppose habitat problems exist with bear re-occupancy, but instead approaches the issues with the perspective of making sure local people are involved and given sufficient tools to respond to management changes as need arises.
- The key to a broader recovery lies in bears utilizing lands that are not managed solely for them but in which their needs are adequately considered along with other uses. The plan also recognizes the pivotal role private-landowner support will play in a broader recovery.
- Preventative measures are much better than simply responding to problems; however, a great deal is unknown about how bears will utilize some of the available habitats.
- The plan must respond as changes occur and be open to public scrutiny and input.

## Other Agencies that have Jurisdiction or Responsibility

At present, the USFWS is responsible for grizzly bear recovery and management activities. Federal laws, rules and regulations provide guidance. When grizzlies are delisted and management authority is transferred to the State of Montana, state law becomes the primary regulatory and legal mechanism guiding management. Two titles within Montana statutes describe the legal status and management framework for grizzly bears. Title 87 pertains to all fish and wildlife species and oversight by FWP. Title 81 pertains to the Montana Department of Livestock (MDOL) and its responsibilities for predatory animal control. Montana statutes assign joint responsibility to FWP and MDOL for managing wildlife that cause property damage, i.e. injury or loss, to livestock through a cooperative agreement with MDOL. Wildlife Services (WS) conducts field investigations and management activities in cases of property damage caused by wildlife such as black bears and wolves. Grizzly bear depredations to livestock are cooperatively investigated and managed by WS and FWP.

The U.S. Forest Service (USFS), the National Park Service (NPS), the Bureau of Land Management (BLM), USFWS, or other federal jurisdictions administer federally owned lands. These agencies manage these lands according to their enabling legislation, agency mission, and relevant federal laws, rules, and regulations. FWP coordinates with federal agencies on wildlife and habitat issues of mutual interest but has no legal jurisdiction over how those lands are managed. NPS has jurisdiction for wildlife within national parks.

Montana's Native American tribes have jurisdictional authority for wildlife conservation and management programs within reservation boundaries. FWP coordinates with tribal authorities on issues of mutual interest.

#### Recent History of Bears in the Greater Yellowstone Area

Grizzlies were never eliminated from Montana, but their numbers probably reached their lowest levels in the 1920s. At that time, changes were made out of concern for the future of the species including designating grizzlies a "game animal" in 1923, the first such designation of the species in the lower 48 states. This change, along with the early prohibitions on the use of dogs to hunt bears, outlawing baiting (both in 1921), closing seasons, etc., had the effect of allowing grizzlies to survive in portions of western Montana.

The degree of protection and the sophistication of management practices have grown steadily. In the 1940s, the importance of protecting fish and wildlife habitat began to emerge as a key public issue in wildlife management. Through all of the previous years, wildlife conservation was the goal, and was sought through the restriction and regulation of hunters and anglers. Although partially effective, the regulations and laws failed to address a more fundamental issue: the protection of fish and wildlife habitat.

Habitat protection under state authority began with winter game range acquisitions in the 1940s and stream preservation in the early 1960s. Generally, concern for and protection of habitat appeared in state laws dealing with controlling natural resource development. These laws usually addressed specific resource issues such as surface mining and siting of major industrial facilities. An exception to this specific approach was the Montana Environmental Policy Act

(MEPA) adopted in 1971. Montana MEPA law mirrored in large part the National Environmental Policy Act (NEPA) adopted by Congress in 1969.

High mortality rates resulting from closure of the remaining open dumps in Yellowstone National Park (YNP), raised concerns over the status of the grizzly population in the greater Yellowstone area during the late 1960s and early 1970s. This population, along with other grizzly populations in the lower 48 states, was listed as threatened under the ESA in 1975. As a result of this listing, many management changes were made to benefit grizzlies. A federal recovery plan was prepared and approved in 1982 and revised in 1993. The success of recovery efforts is evident in the estimates of bear numbers in the area, increasing from approximately 230 in the late 1960s to a minimum of 600 bears today. This has set the stage for delisting of the population segment and a return of this population to state and national parks management.

### **Recent Litigation History**

March 2007 – The USFWS announced that the GYA population of grizzly bears was recovered effectively removing the species from the Federal list of threatened and endangered species.

**September 2009** – The Federal District Court in Missoula issued an order vacating the delisting of the GYA grizzly population. In compliance with this order, the Yellowstone grizzly population was once again designated a threatened population under the ESA. The District Court ruled that the USFWS was arbitrary and capricious in its evaluation of white bark pine and that the regulatory mechanisms identified in the final rule were not adequate because they were not legally enforceable.

November 2011 – The 9<sup>th</sup> Circuit Court of Appeals issued an opinion affirming in part and reversing in part the district court's decision vacating the final rule delisting GYA grizzly bears. The Appellate court affirmed the USFWS's determination that existing regulatory mechanisms are adequate to protect grizzlies in the Yellowstone area while ruling that the USFWS had failed to adequately explain its conclusion that the loss of whitebark pine was not a threat to the population. In compliance with this order, the GYA population of grizzly bears remains federally listed as "threatened" under the ESA while more recent scientific data is considered.

#### **Policy and Statute**

MEPA rules provide for the preparation and distribution of an environmental analysis evaluating state actions, programs or policies that affect the quality of the human environment (MCA 12.2.428). Grizzly bear management in Montana is being addressed within the framework of MEPA and its requirements.

The Montana Fish and Wildlife Commission (Commission) is the policy making body for FWP's fish and wildlife programs. Section 87-1-301(1), Montana Codes Annotated (MCA) requires the Commission to "set the policies for the protection, preservation, and propagation of the wildlife, fish, game, furbearers, waterfowl, nongame species, and endangered species of the state for the fulfillment of all other responsibilities of FWP as provided by law."

The legislature has given specific policy direction to the Commission on the issue of grizzly bears through the following rules:

# **87-5-301. Grizzly bear -- findings -- policy.** (1) The legislature finds that:

- (a) grizzly bears are a recovered population and thrive under responsive cooperative management;
- (b) grizzly bear conservation is best served under state management and the local, state, tribal, and federal partnerships that fostered recovery; and
- (c) successful conflict management is key to maintaining public support for conservation of the grizzly bear.
  - (2) It is the policy of the state to:
- (a) manage the grizzly bear as a species in need of management to avoid conflicts with humans and livestock; and
- (b) use proactive management to control grizzly bear distribution and prevent conflicts, including trapping and lethal measures.

# **87-5-302. Commission regulations on grizzly bears.** (1) The commission may:

- (a) pursuant to subsection (2), regulate the hunting of grizzly bears, including the establishment of tagging requirements for carcasses, skulls, and hides; and
  - (b) establish requirements for the transportation, exportation, and importation of grizzly bears.
- (2) When special grizzly bear licenses are to be issued pursuant to 87-2-701, the commission shall establish hunting season quotas for grizzly bears that will prevent the population of grizzly bears from decreasing below sustainable levels and with the intent to meet population objectives for elk, deer, and antelope. The provisions of this subsection do not affect the restriction provided in 87-2-702(3) that limits a person to the taking of only one grizzly bear in Montana.

Within this legal framework, the Commission developed a grizzly bear policy in Section 12.9.103, Annotated Rules of Montana, "Whereas, the Montana fish and game commission has management authority for the grizzly bear, a resident wildlife species, and is dedicated to the preservation of grizzly bear populations within the state of Montana;" That policy addresses the need to protect grizzly bear habitat, the need to pursue grizzly bear research, the role of regulated hunting in grizzly bear management, depredations and the appropriate FWP response to depredations, and requires compliance with federal regulations relating to grizzly bears. It is within this framework, and that described by the ESA (16 U.S.C. Sec. 1531, et seq.), that specific FWP goals for the grizzly bear were developed.